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IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

UNITED CHURCH OF THE MEDICAL CENTER, an Illinois religious corporation, **THE UNITED METHODIST BISHOP OF THE CHICAGO AREA**, et al.,

Petitioners,

v.

STATE OF ILLINOIS MEDICAL CENTER COMMISSION,

Respondent.

On Petition For A Writ Of Certiorari To The Appellate Court Of Illinois, First Judicial District

RESPONDENT'S BRIEF IN OPPOSITION

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LIST OF PARTIES

The respondent is the State of Illinois Medical Center Commission, a body politic and corporate of the State of Illinois. It was created pursuant to "An Act in relation to the establishment of a medical center district in the City of Chicago and for the control and management thereof," approved June 4, 1941 (excerpts from this statute appear in the Appendix hereto at A1).

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UNITED CHURCH OF THE MEDICAL CENTER, an Illinois religious corporation, THE UNITED METHODIST BISHOP OF THE CHICAGO AREA, et al.,

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STATE OF ILLINOIS MEDICAL CENTER COMMISSION,

Respondent.

On Petition For A Writ Of Certiorari To The Appellate Court Of Illinois, First Judicial District

RESPONDENT'S BRIEF IN OPPOSITION

JURISDICTION

The petitioners assert jurisdiction pursuant to Title 28 U.S.C. Section 1257(3). Jurisdiction is not this court, however, because,

(1) The court below neither ruled on nor was asked to rule on any federal constitutional issue with respect to the alleged conflict of interest of members of the respondent Commission;

(2) The judgment below is not final in that the Illinois Appellate Court remanded the case for the determination of damages, if any, to the remainder and the respondent is unable to take title or possession of the property in question until just compensation is determined and paid.

STATUTES INVOLVED

An Act in relation to the establishment of a Medical Center District in the City of Chicago and for the control and management thereof, approved June 4, 1941 (Ill. Rev. Stat. 1979, ch. 111½, pars. 5001-5022) (the "Medical Center Act"). Excerpts from the original statute creating the respondent Commission and enumerating its powers appear in the Appendix hereto at A1. Excerpts from the statute in effect at the time of the respondent Commission's acquisition resolution appear at A3.

STATEMENT OF THE CASE

The respondent State of Illinois Medical Center Commission is the governing body of the Medical Center District established by the Illinois General Assembly in 1941. The preamble to the enabling legislation set forth the legislative findings of the reasons for creating the Commission: A center of medical activity had grown up in the near west side of Chicago, an area of blight, and the Commission is to protect the area from further deterioration and to provide an environment to stabilize, retain and pro-

vide expansion for the large private investments in hospitals, clinical and research facilities of the area. *See*, Appendix A1.

The Medical Center District is now the largest medical complex in the world. It contained approximately 365 acres in 1982 (Transcript of trial proceedings ("Tr."), v.1, p.49). Within this compact area, there are 53 hospitals, medical schools, church facilities and care institutions. (Tr., v.1, p.57.) These include the University of Illinois Medical Center, Cook County Hospital, Rush-Presbyterian St. Luke's Medical Center, Illinois State Psychiatric Institute, Illinois Pediatric Institute, the National Society for Crippled Children, the Cook County Institute for Forensic Medicines, Chicago Lighthouse for the Blind and the Veterans Administration West Side Medical Center.

The respondent Commission is authorized by statute to acquire the fee simple title to real property lying within the district for its purposes, including any parcel of real property used for both religious* and secular purposes. Medical Center Act, Section 3, A5. The real property at issue was used as a parking lot and the spaces were rented out on a monthly basis to hospital employees. It was therefore subject to acquisition because of its secular purposes. In the proceedings below, the petitioners denied the secular purposes of the parking lot, but the question was resolved against them at trial and in the Illinois Appellate Court (Petition A8) and is not raised in the ques-

* The petitioners (Petition, p. 3) disclaim knowledge of contested takings of religious property. But acquisition of such property is common and frequently raises the question of valuation of churches as "special use" property. *See, e.g.*, 4 J. Sackman, Nichols' Law of Eminent Domain (Revised 3d Ed. 1985) § 12.32[4][b] and § 2.1 n.1 (Supp.). *See also* 28 Am. Jur. 2d Eminent Domain § 78 p. 736; 29A C.J.S. Eminent Domain § 65 p. 311.

tions presented to this Court. By a resolution enacted July 17, 1981 (Plaintiff's exhibit no. 3), the respondent Commission authorized the acquisition of the subject property for the purposes provided in the Medical Center Act.

The petitioners claim that the respondent's proceedings were "totally infected" by administrative bias in that the only reason for the respondent's acquiring this parcel was to hand it over to a hospital within the district, Rush-Presbyterian-St. Luke's Medical Center ("Rush Hospital"). The petitioners were totally unsuccessful below in showing any official connection between Rush Hospital and the proposed acquisition. No contract, resolution or any other official action, whether preliminary or otherwise, conveying or promising to convey the property to Rush Hospital was ever offered in evidence. Rather, the trial testimony unequivocally and uncontradictably demonstrated that there was no certainty that, after the acquisition, the property is to be conveyed to Rush Hospital.

The respondent's executive director testified that pursuant to Section 6 of the Medical Center Act (A6), the ultimate disposition and use of the property would not be determined until after a use value hearing was held. Following the statutory use value hearing, the respondent Commission determines the identity of a grantee, the value for which the property will be sold to such grantee and the permissible uses for such property. It was not unusual for acquired property to be conveyed after such hearing to a user other than the person originally requesting the condemnation. Tr., v.1, pp.48-9; v.3, pp.23-24, 36.

The petitioners see an invidious conspiracy in Rush Hospital's advocacy of the acquisition and the hospital's furnishing information about the subject property to the respondent Commission. But these acts of advocacy or cooperation do not create a vested right in Rush Hospital.

The petitioners were unable to demonstrate below that the respondent Commission had made any binding commitment regarding either the disposition or the allowable future uses of the property subsequent to acquisition. Tr., v.1, p.38, 43, 55-6.

In this Court and below, the petitioners alleged that a conflict of interest existed because of connections the petitioners saw between members of the respondent Commission and Rush Hospital. Since there is no legal obligation upon the respondent Commission to convey the property to Rush Hospital nor has the respondent Commission made such a decision, the Illinois Appellate Court (Appendix A7) found it irrelevant whether or not any members of the governing body of the respondent Commission were connected to Rush Hospital.

Moreover, the connections are tenuous at best. Two commissioners are said to have "important links to Rush." Petition, p.12. They are officers of the Chicago Foundlings Home, a welfare agency having contractual relations with Rush Hospital. Tr., v.3, pp.30-32. The other alleged conflict was that of a commissioner who was a member of a law firm which represented Rush Hospital. Neither the trial court nor the Illinois Appellate Court concluded that a conflict of interest existed. The Illinois Appellate Court noted that this issue "can be raised by [petitioners] or other interested parties in the required public hearing if the Commission attempts to lease or convey the subject real estate to Rush." Appendix A7.

At the condemnation trial, the court denied all four of the petitioners' traverses (motions to dismiss for want of authority to condemn). The petitioners also filed a cross-petition seeking compensation for damage to the remainder of the property, since the parking lot being condemned composed approximately one-third of the parcel. The trial

court denied the cross-petition and did not admit any evidence as to the damage to the remainder of the subject property. On appeal, the Illinois Appellate Court held that the cross-petition should have been permitted. The court reversed the trial court on that issue and remanded the case for trial upon the question of damages, if any, to remainder.

This case is now pending in the Circuit Court of Cook County, Illinois, to be set for trial on the issue of damage to remainder. The mandate of the Illinois Supreme Court with respect to its denial of leave to appeal was issued October 24, 1986. The Illinois Appellate Court issued its mandate to the Circuit Court of Cook County, Illinois, November 14, 1986. Petitioners sought no stay of the mandates.

REASONS FOR DENYING THE WRIT

I.

NO FEDERAL OR CONSTITUTIONAL QUESTIONS WITH RESPECT TO THE "CONFLICT OF INTEREST" WERE RAISED OR DETERMINED BELOW; TWO COURTS FOUND NO CONFLICT OF INTEREST.

The Illinois Appellate Court disposed of the conflict of interest argument in two paragraphs on the grounds that, without evidence of fraud, the courts cannot inquire into the motives of municipal officers and that the question of interest was premature. Petition, A7-8. The Illinois Appellate Court did not consider any constitutional questions because the petitioners raised none below. Their entire argument to the appellate court was based on state law questions and state cases; due process and the federal constitution were not mentioned. See argument of the peti-

tioners to the Illinois Appellate Court on this issue, the entire text of which is set forth in the Appendix A10-12. Because the petitioners failed to raise any federal or constitutional grounds in the review before the highest court of the state, those issues are waived and there is no jurisdiction under Title 28 U.S.C. Section 1257(3). *Herndon v. Georgia*, 295 U.S. 441, 443 (1935); *Beaty v. Richardson*, 276 U.S. 599 (1928); *Beck v. Washington*, 369 U.S. 541, 553 (1962).

The recognition of their failure to raise any federal or constitutional issue below is apparent from the failure of the petitioners to observe Rule 21.1(h), which requires that a petitioner must specify "the stage in the proceedings, both in the court of first instance and the appellate court, at which the federal questions sought to be reviewed were raised; the method or manner of raising them and the way in which they were passed upon by the court; . . . ."

The petitioners were unable to convince the trial court or the Illinois Appellate Court that the respondent Commission's proceedings were infected by a conflict of interest. The facts upon which the alleged conflict of interest were based were found not to be pertinent by either court and both courts rejected any conclusion that the acquisition of the subject property was a result of a secret prearrangement to force the property from the petitioners and turn it over to Rush Hospital. The petitioners now seek to have this Court "undertake to review concurrent findings of fact by two courts," *Graver Manufacturing Co. v. Linde Co.*, 336 U.S. 271, 275 (1949). But the questions of fact and the conclusionary findings of the state court may not be re-examined. *Grayson v. Harris*, 267 U.S. 352, 358 (1925); *Portland Ry. Co. v. Railroad Commission*, 229 U.S. 397, 412 (1913); *Fry Roofing Co. v. Wood*, 344 U.S. 157, 160 (1952).

II.

THIS CASE DOES NOT MEET THE FINALITY REQUIREMENTS OF TITLE 28 U.S.C. SECTION 1257 BECAUSE THERE IS NO FINAL JUDGMENT; THE CASE WAS REMANDED FOR A NEW TRIAL WITH RESPECT TO THE DAMAGE TO THE REMAINDER.

The Illinois Appellate Court (Petition A9-11) held that the trial court improperly dismissed the petitioners' cross-petition, which sought the determination of damage to the property not taken in the condemnation proceeding. The Illinois Appellate Court, although affirming the right of the respondent Commission to acquire the parking lot, ordered that "the cause is remanded for a determination of the damage, if any, due United Church to the remainder of its property occasioned by the taking."

There is no final judgment in this case. The respondent Commission is unable to acquire petitioners' property or interfere with any of their property rights until the entry of a final judgment determining the amount of just compensation and the payment by the respondent Commission of the full amount due as compensation for the property damaged and taken. *Board of Junior College v. Carey*, 43 Ill.2d 82, 250 N.E.2d 644, 646 (1969); *City of Crystal Lake v. LaSalle National Bank*, 121 Ill.App.3d 364, 459 N.E.2d 643 (1984). Until such time as the determination of the award and the full deposit thereof, the petitioners enjoy the full use and benefit of the property.

The petitioners argue that they will be deprived of the constitutional right to just compensation in the subsequent trial court proceedings because they will be unable to determine the use to which the subject property will be put, and such use is an important element in an appraiser's determination of damage to remainder. That petitioners will be unable to prove damages or that they will be dis-

satisfied with the award of just compensation for damage to the remainder made by the trial court after remand is speculation. There is no showing that the damage to remainder could not be calculated upon the development of the subject property consistent with the uses permitted under the Medical Center Act, the applicable zoning, building and area-development codes.

This kind of case, with an issue still to be determined at trial, is not final for the purposes of Title 28 U.S.C. Section 1257. In an eminent domain case, "the federal constitutional question embraces not only a taking, but a taking on payment of just compensation. A state judgment is not final unless it covers both aspects of that integral problem." *North Dakota Pharmacy Board v. Snyder's Stores*, 414 U.S. 156, 163 (1973). *See also Grays Harbor Logging Co. v. Coats-Fordney Co.*, 243 U.S. 251, 256 (1917); *San Diego Gas and Electric Co. v. City of San Diego*, 450 U.S. 621 (1981).

The petitioners observe that the respondent Commission has not yet determined how the subject property will be used. This will be decided only after the property is acquired and only after the use value hearing pursuant to Section 6 of the Medical Center Act. The petitioners argue that it is unconstitutional for the respondent to exercise its power of eminent domain without first having determined the specific use for the property to be acquired.

But, it is not improper for a redevelopment agency to acquire property for which an ultimate use has not yet been determined. Therefore, it is constitutional for the respondent Commission to acquire property from private owners in order to carry out the mandate of the General Assembly to prevent further deterioration and blight in the district and to "maintain the proper surroundings for

a medical center and to stabilize and retain therein large private investments in hospital, clinical and research facilities, . . . by providing for the expansion of medical and allied activity in the area surrounding the existing center of medical institutions. . . ." Preamble to the Medical Center Act, Appendix A1. It is now firmly established that a specific plan of development is not a prerequisite to acquisition where a public body is authorized to acquire property for redevelopment and to stop or prevent blight. *Berman v. Parker*, 348 U.S. 26 (1954); *Cf. Hawaii Housing Authority v. Midkiff*, 467 U.S. 229 (1984).

The resolution authorizing the acquisition of the subject property stated that the acquisition was for the purposes provided in the Medical Center Act. In conformity with the Medical Center Act, the public purpose of the present acquisition is to convert its use to a medical or allied activity. The General Assembly, in enacting the Medical Center Act, made clear that the entire district was to be used for medical center activities. The General Assembly found, in the preamble to the Medical Center Act, that the district was in an area of blight. The respondent Commission was created in order to maintain the proper surroundings for a medical center and to stabilize and retain therein "the socially valuable hospital, research facilities and care centers." The General Assembly's findings identified the means for encouraging the preservation and the expansion of the Medical Center District: "[T]his need can be met by providing for the expansion of medical and allied activity in the area surrounding the existing center of medical institutions, [and] if the character of such area is protected from further deterioration . . . ."

CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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February 18, 1987

APPENDIX

Excerpts From Original Statute Creating Respondent Commission
1941 Ill. Laws vol. 1, p. 303 (1941)

AN ACT *in relation to the establishment of a medical center district in the city of Chicago and for the control and management thereof.*

WHEREAS, there exists in the Near West Side of Chicago a center of medical activity which has grown up over a long period of time without any definite plan; and due to the general deterioration of the surrounding district, this center is now in an area of so called blight; and in order to maintain the proper surroundings for a medical center and to stabilize and retain therein large private investments in hospitals, clinical and research facilities, it will be necessary to improve the condition of the surrounding territory; and there is need for additional services for the ill and infirm of Chicago and the surrounding communities; and this need can be met by providing for the expansion of medical and allied activity in the area surrounding the existing center of medical institutions, if the character of such area is protected from further deterioration, therefore

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

SECTION 1. There is created in the city of Chicago a medical center district hereinafter called, the District, whose boundaries are Ashland Boulevard on the east, Congress Street on the north, Oakley Boulevard on the west, and Roosevelt Road on the south.

§ 2. A medical center commission, hereinafter called the Commission, is created. Such Commission shall consist of five members, one of whom shall be appointed by the Governor, one by the Mayor of Chicago, one by the President of the County Board of Cook County, one by the

President of the Chicago Park District, and one by the Trustees of the University of Illinois. The first member appointed by the Mayor of Chicago shall hold office for one year, the first member appointed by the President of the Chicago Park District shall hold office for two years, the first member appointed by the President of the County Board of Cook County shall hold office for three years, the first member appointed by the Trustees of the University of Illinois shall hold office for four years, and the first member appointed by the Governor shall hold office for five years; members thereafter appointed shall hold office for a term of five years and until their successors are appointed as provided in this Act. The Commission shall meet within ten days after the appointment of the last member, and shall elect one of its number as president. Thereafter the Commission shall hold regular meetings annually for the election of a President, and for the adoption of a budget. Special meetings may be called by the President or by any two members. Each member shall take an oath of office for the faithful performance of his duties.

§ 3. The Commission is authorized to acquire real property lying within the District and personal property required for its purposes, by gift, purchase, lease or otherwise. All private real property within the District, except that owned by medical institutions or allied educational institutions, hospitals, dispensaries, clinics, churches, dormitories, or homes for the nurses, doctors, students, instructors, or other officers or employees of institutions located in the District, or any real property which is used for offices or for recreational purposes in connection with the aforesaid institutions may be acquired under the provisions of "An Act to provide for the exercise of the right of Eminent Domain", approved April 10, 1872, as amended.

§ 4. The Commission may construct in such District, hospitals, sanitariums, clinics, laboratories, or any other institution, building or structure which may be of use or benefit in the practice of medical science and treatment of human ailments, or office buildings for physicians or

dealers in medical accessories, or dormitories, homes, or residences for the medical profession, including internes, nurses, students, or other officers or employees of the institutions within the District, or for the use of relatives of patients in the hospitals or other institutions within the District.

* * *

Excerpts From Statute In Effect At The Time Of Respondent Commission's Resolution Authorizing Acquisition (Ill. Rev. Stat. 1979, Ch. 111½)

5001. District—Creation—Boundaries

§ 1. There is created in the City of Chicago a medical center district hereinafter called the District, whose boundaries are Ashland Boulevard on the East, a line co-incidental with Congress Street extending from Ashland Boulevard in a westerly direction to Oakley Boulevard on the north, Oakley Boulevard on the west and 13th Street on the south.

5002. Medical Center Commission—Creation—Powers—Offices—Membership—Vacancies—Personnel—Meetings—Reports

§ 2. There is hereby created a body politic and corporate under the corporate name of Medical Center Commission, hereinafter called the Commission, and by that name it shall have perpetual succession, power to contract and be contracted with, to sue and be sued except in actions sounding in tort, to plead and be impleaded, to have and use a common seal, and to alter the same at pleasure. All actions sounding in tort against the Commission shall be prosecuted in the Court of Claims. The principal office of the Commission shall be in the city of Chicago, and the Commission may establish such other offices within the state of Illinois at such places as to the Commission shall seem advisable. Such Commission shall consist of seven members, four of whom shall be appointed by

the Governor, one by the Mayor of Chicago, one by the President of the County Board of Cook County and one by the President of the Chicago Park District. All members shall hold office for a term of five years and until their successors are appointed as provided in this Act; provided, that as soon as possible after the effective date of this amendatory Act, the Governor shall appoint four members for terms expiring, respectively, on June 30, 1952, 1953, 1954 and 1955. The terms of all members heretofore appointed by the Governor shall expire upon the commencement of the terms of the members appointed pursuant to this amendatory Act. Any vacancy in the membership of the Commission occurring by reason of the death, resignation, disqualification, removal or inability or refusal to act of any of the members of the Commission shall be filled by the person who had appointed the particular member, and for the unexpired term of office of that particular member. Vacancies caused by termination of the period for which members were appointed shall be filled by new appointments for terms of five years each and until their successors are appointed as provided in this act. The Commission shall obtain, pursuant to the provisions of the "Personnel Code" enacted by the 69th General Assembly, such personnel as to the Commission shall seem advisable to carry out the purposes of this Act and the work of the Commission.

The Commission shall hold regular meetings annually for the election of a president, vice-president, secretary, and treasurer and for the adoption of a budget. Special meetings may be called by the President or by any two members. Each member shall take an oath of office for the faithful performance of his duties. Four members of the Commission shall constitute a quorum for the transaction of business.

The Commission shall submit, to the General Assembly not later than March 1 of each odd-numbered year, a detailed report covering its operations for the two preceding calendar years and a statement of its program for the next two years.

* * *

5004. Real and personal property—Acquisition

§ 3. The Commission is authorized to acquire the fee simple title to real property lying within the District and personal property required for its purposes, by gift, purchase, or otherwise, and title thereto shall be taken in the corporate name of the Commission. The Commission may acquire by lease such real and personal property found by the Commission to be necessary for its purposes and to such the Commission finds that it need not acquire the fee simple title for carrying out of such purposes. All real property within the District, except that owned and used for purposes authorized under this Act by medical institutions or allied educational institutions, hospitals, dispensaries, clinics, dormitories or homes for the nurses, doctors, students, instructors or other officers or employees of the aforesaid institutions located in the District, or any real property which is used for offices or for recreational purposes in connection with the aforesaid institutions may be acquired by the Commission in its corporate name under the provisions of "An Act to provide for the exercise of the right of Eminent Domain", approved April 10, 1872, as amended; provided, further, that no real or personal property owned by any religious organization, and used by it for religious purposes shall be acquired by the Commission under the provisions of "An Act to provide for the exercise of the right of Eminent Domain", approved April 10, 1872, as amended, by any parcel of real property used for both religious and secular purposes may be acquired by the Commission under said "An Act to provide for the exercise of the right of Eminent Domain."

5005. Institutions and buildings—Authority to construct

§ 4. The Commission may, in its corporate capacity, construct in such District, hospitals, sanitariums, clinics, laboratories, or any other institution, building or structure which may be of use or benefit in the practice of medical science and treatment of human ailments, or for such old peoples' homes as the Commission shall find useful in the study of, research in, or treatment of illnesses or infirm-

ities peculiar to aged people, after a public hearing to be held by any Commissioner or other person authorized by the Commission to conduct the same, which Commissioner or other person shall have the power to administer oaths and affirmations and take the testimony of witnesses and receive such documentary evidence as shall be pertinent, the record of which hearing he shall certify to the Commission, which record shall become part of the records of the Commission, notice of the time, place, and purpose of such hearings to be given by a single publication notice in a secular newspaper of general circulation in the city of Chicago at least ten days prior to the date of such hearing, or for such institutions as shall engage in the training, education, or rehabilitation of persons who by reason of illness or physical infirmity are wholly or partially deprived of their powers of vision or hearing or of the use of such other part or parts of their bodies as prevent them from pursuing normal activities of life, or office buildings for physicians or dealers in medical accessories, or dormitories, homes or residences for the medical profession, including internes, nurses, students or other officers or employees of the institutions within the District, or for the use of relatives of patients in the hospitals or other institutions within the District. All such structures and improvements shall be erected and constructed in accordance with Sections 28 and 49 of the Civil Administrative Code of Illinois, to the same extent as if the Commission were a Code Department.

* * *

5009. Sale or lease of real property

§ 6. The Commission may at such times as it deems advisable for the development of the District, lease any parcel of real estate acquired by it or sell the fee simple title thereto or any lesser estate therein to any medical or allied educational institution, hospital, dispensary, clinic, religious organization, corporation, trust, individual, or group of individuals, to be used, subject to the restrictions of this Act, for the purposes stated in Section 4, and to any corporation or person who shall use the same

for serving persons using the facilities offered within the District, subject to such restrictions as to the use thereof as the Commission shall determine will carry out the purpose of this Act. To assure that the use of the real property so sold or leased is in accordance with the provisions of this Act, the Commission shall inquire into and satisfy itself concerning the financial ability of the purchaser to complete the project for which said real estate is sold or leased in accordance with a plan to be presented by the purchaser or lessee, which plan shall be submitted, in writing, to the Commission. Such purchaser or lessee shall under such plan undertake (1) to use the land for the purposes designated in the plan so presented; (2) to commence and complete the construction of the buildings or other structures to be included in the project within such periods of time as the Commission fixes as reasonable; and (3) to comply with such other conditions as the Commission shall determine are necessary to carry out the project. Any real property sold by the Commission pursuant to the provisions of this Act shall be sold at its use value, which may be more or less than its acquisition cost, and which use value represents the value at which the Commission determines, after a hearing by the Commission or by such person as the Commission designates to hold such hearing, such real property should be made available for sale or rental in order that it may be developed for the accomplishment of the purposes of this Act. In determining the use value of the real property, the Commission shall take into consideration whether or not said property is to be used by a wholly or partially tax supported body created under the laws of the State of Illinois, by any department of the State government or any political subdivision of the State, by a charitable institution, or by a private person or institution operating for profit; and the Commission shall also consider the contribution that the project will make toward the development of the District and the furtherance of the purposes of this Act in determining such use price, provided, however, that the Commission may convey the fee simple title to land acquired by it, without the payment of any consid-

eration, to the State of Illinois, any political subdivision thereof or to any body politic and corporate or public corporation created under the laws of the State of Illinois for the carrying out of any function of the State. At any hearing for the purpose of the Commission's making the aforesaid determinations, an investigation should be made and such witnesses and documentary evidence examined as will have bearing on the use value of the property to be sold or leased as is herein provided. The Commission shall designate a Commissioner or other person of legal age to conduct the hearing provided for herein, and such Commissioner or other person so designated by the Commission shall give reasonable notice to the interested parties of the time, place and purpose for the holding of such hearing. Such Commissioner or other person designated by the Commission to hold such hearing shall have the power to administer oaths and affirmations, and shall cause to be taken the testimony of witnesses and the production of papers, books, records, accounts and documents; and the person so designated to hold said hearing shall certify to the Commission the record of the proceedings held before him in connection with such hearing. Such record of proceedings shall become a part of the records of the Commission. All such conveyances and leases of real estate made by the Commission to any medical or allied educational institution, hospital, dispensary, clinic, religious organization, or otherwise as authorized in this section shall be on condition that, in the event of non-use for the purposes prescribed in this Act, or of disuse for a period of one year, title to such property shall revert to the Commission, unless an extension is granted by the Commission after public hearings. All conveyances and leases made by the Commission to any corporation or person for use of serving the residents or any person using the facilities offered within the District shall be on condition that in the event of violation of any of the restrictions as to the use thereof as the Commission shall have determined will carry out the purposes of this Act, that title to such property shall revert to the Commission upon a finding by the Commission, after public hearing, of violation of

such restrictions, unless the Commission finds that financing necessary for the construction of any building or improvement to be used by any corporation or person for use of serving the residents or any person using the facilities offered within the District cannot be obtained if title to the land upon which such building or improvement is to be made is subject to such reverter provision, which finding shall be made by the Commission after public hearing held pursuant to a single publication notice given in a secular newspaper of general circulation in the City of Chicago at least ten days prior to the date of such hearing, such notice to specify the time, place and purpose of such hearing, and upon such finding being made, the Commission may cause such real property to be conveyed free of such reverter provision, provided that at least five members of the Commission vote in favor thereof. The hearing in this section provided for shall be conducted by any Commissioner or any other person authorized by the Commissioner, and the person conducting such hearing shall have the power to administer oaths and affirmations, and shall hear such oral evidence and receive such documentary evidence as shall be pertinent, and he shall certify the record of the hearing to the Commission. Provided, that in the event a reverter of title to any Property is declared by the Commission pursuant to the terms of this Act, the interest of the Commission shall be subject to any then existing valid mortgage or trust deed in the nature of a mortgage, but in case the title is acquired through foreclosure of such mortgage or trust deed or by deed in lieu of foreclosure of such mortgage or trust deed, then the title to or ownership of the property shall be subject to the reverter provisions contained in the Act as to any violations occurring thereafter as herein provided: Provided, further, that the Commission shall not least any individual room, apartment or housing accommodation; nor shall any property acquired for demolition in furtherance of the general plan for the development of the District be leased for a longer period than one year at a time.

No conveyance of real property shall be executed by the Commission without the prior written approval of the Governor.

Excerpt From Petitioners' State Brief
(Brief For Defendants-Appellants, Illinois Appellate Court, First District, No. 84-2435, pp. 37-39)

B.

THE CONDEMNATION PROCEEDINGS ARE FATALLY INFECTED WITH ADMINISTRATIVE BIAS AND CONFLICT OF INTEREST.

It will be recalled that the key resolution supporting the taking, dated July 17, 1981, was passed by a vote of four commissioners (a bare quorum) three of whom had ties to Rush, the instigator of the action which would not be deterred in its quest to take over the Church's lands. The resolution's movant, Roach, was at the time, an attorney for Rush.

Illinois Courts including this Honorable Court have long condemned the undermining effect which conflict of interest and bias bring to bear upon the administrative process. In *Commissioners of Union Drainage District No. 1 v. Smith*, 233 Ill. 417 (1908), the Supreme Court overturned the action of a commission organized to plan the enlargement of a drainage district and to make assessments of the adjoining properties where one of the commissioners owned lands among those subject to the assessment. The Court even invalidated as unconstitutional the statute which had enabled the appointment of such an incompetent commissioner. The Court stated:

> "Every constitutional provision that has ever been in effect in this state dealing with the method by

> which the property of an individual may be forcibly taken away from him, of necessity contemplated the determination of the question of the right to take that property by an impartial judicial body." 233 Ill. at 425-426.

Similarly, in *City of Naperville v. Wehrle*, 340 Ill. 579 (1930), the Supreme Court overturned a condemnation action where it appeared that one of the commissioners named to investigate and report to the court on just compensation was Secretary of the Naperville Board of Education. The overall condemnation plan included school land under the jurisdiction of the latter board. In the opinion adopted *per curiam* by the Court, it is stated:

> ". . . It is the general rule, even apart from statute, that officers acting in a judicial or quasi-judicial capacity are disqualified by their interests in the controversy to be decided." 340 Ill. at 581.

The opinion went on to liken the role of an administrative commissioner to that of a juror and noted:

> "One is not a competent juror in a case if he is master, servant, steward, *counsellor or attorney* of either party." 340 Ill. at 582. (Emphasis added).

To the same effect, see *In re Heirich*, 10 Ill.2d 344 (1957) where one of the commissioners in a professional discipline case was a partner in a law firm which represented an arguably interested third party.

Finally, this Honorable Court has recently added its own decision to the body of cases insisting upon exclusion of possibly biased decision-makers from the administrative process. In *Board of Education of Niles Township v. Reg. Board of Schools*, 468 N.E.2d 1247 (Ill.App., 1st Dist. 1984) this Court held invalid a school district boundary decision by a board of education because one commissioner who voted for the action had been a petitioner in a sepa-

rate proceeding conceivably adverse to the interests of a party then before the board.

The teaching of all these cases is clear in the controversy at hand. The condemnation proceedings of the Medical Center Commission are a nullity and must be set aside.